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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA  
8

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 CALIFORNIA BERRY CULTIVARS, LLC,

14 Plaintiff,

15 v.

16 THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA, a corporation,

17 Defendant.  
18

19 THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA, a corporation,

20 Cross-Complainant,

21 v.

22 CALIFORNIA BERRY CULTIVARS, LLC,  
23 DOUGLAS SHAW, and KIRK LARSON,

24 Crossclaim Defendants.  
25  
26  
27  
28

Case No. 3:16-cv-02477-VC

**UNOPPOSED REQUEST FOR  
INTERNATIONAL JUDICIAL  
ASSISTANCE PURSUANT TO THE  
HAGUE CONVENTION OF 18  
MARCH 1970 ON THE TAKING OF  
EVIDENCE ABROAD IN CIVIL OR  
COMMERCIAL MATTERS**

1 2 3 4	APPLICANT/REQUESTING AUTHORITY:	Honorable Vince Chhabria United States District Judge Northern District of California San Francisco Courthouse, Courtroom 4 450 Golden Gate Avenue, 17th Floor San Francisco, CA 94102
5 6	SENDER:	Rachel Krevans Morrison Foerster LLP 425 Market Street, Suite 3200 San Francisco, CA 94105 Phone: 415-268-7178
7 8 9	CENTRAL AUTHORITY OF REQUESTED STATE:	Subdirección General de Cooperación Jurídica Internacional Ministerio de Justicia c/ San Bernardo N° 62 28071 MADRID Spain
10 11 12	PERSON TO WHOM THE EXECUTED REQUEST IS TO BE RETURNED:	Rachel Krevans Morrison Foerster LLP 425 Market Street, Suite 3200 San Francisco, CA 94105 Phone: 415-268-7178

13 In conformity with Article 3 of the Hague Convention of 18 March 1970 on the Taking of  
14 Evidence in Civil or Commercial Matters (“the Hague Evidence Convention”), the United States  
15 District Court of the Northern District of California has the honor to submit the following request  
16 to the Central Authority of Spain:

17 Subdirección General de Cooperación Jurídica Internacional  
18 Ministerio de Justicia  
19 c/ San Bernardo N° 62  
28071 MADRID  
Spain

20 I, the Honorable Vince Chhabria, United States District Court Judge of the Northern  
21 District of California, respectfully request that this Letter Request be executed and the below  
22 Cross-Complainant be permitted to obtain from Javier Cano and David Garcia Sinova answers to  
23 the questions in Appendix 1. The evidence sought is expected to be used at trial for the above  
24 captioned matter, a civil law suit over which I am currently presiding.

25 The names and addresses of the parties and their representatives of the proceedings  
26 currently pending before this Court are listed below:

CROSSCLAIM DEFENDANTS:	CALIFORNIA BERRY CULTIVARS, LLC, DOUGLAS SHAW, and KIRK LARSON c/o Rick L. McKnight (State Bar No. 55183) fmcknight@jonesday.com JONES DAY 555 South Flower Street Fiftieth Floor Los Angeles, CA 90071.2300 USA
COUNSEL FOR CROSSCLAIM DEFENDANTS:	Rick L. McKnight (State Bar No. 55183) fmcknight@jonesday.com JONES DAY 555 South Flower Street Fiftieth Floor Los Angeles, CA 90071.2300 USA
CROSS-COMPLAINANT:	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA c/o Rachel Krevans Morrison & Foerster LLP 425 Market Street, Suite 3200 San Francisco, California 94105 USA
COUNSEL FOR CROSS-COMPLAINANT:	Rachel Krevans Morrison & Foerster LLP 425 Market Street, Suite 3200 San Francisco, California 94105 USA

## **I. NATURE AND STAGE OF THE PROCEEDINGS**

The proceeding for which evidence is sought concerns a civil action that commenced on May 2, 2016, by a complaint filed in California state court by California Berry Cultivars LLC (“CBC”) against the Regents of the University of California (the “University.”) On May 6, 2016, the University removed the action to the Federal Court of the Northern District of California and crossclaimed for patent infringement and other causes of action. The lawsuit involves claims for patent infringement, breach of contract, conversion, unjust enrichment, interference, breach of duty, unfair competition, and other causes of action currently pending in the Northern District of California.

The parties have about a month left until fact discovery closes. Trial has been set to begin March 15, 2017.

1                   **II.     EVIDENCE TO BE OBTAINED**

2           This Letter of Request is to obtain evidence that has a direct and necessary link with this  
3 action and is expected to be used at trial. The University seeks evidence concerning the improper  
4 use of the University's plants in Spain and the subsequent importation of those plants back into  
5 the United States. The University seeks to obtain such evidence through the written questioning  
6 of Javier Cano and David Garcia Sinova, who were believed to be involved in this process. The  
7 list of proposed questions is provided in Appendix 1.

8                   **III.    REQUESTED TAKING OF EVIDENCE**

9           The Court respectfully requests that this Letter of Request be executed by the local court  
10 within whose territory the evidence is to be taken, which Spain has designated as the "Competent  
11 Authority" under Article 2 of The Hague Evidence Convention. Upon execution of this Letter of  
12 Request, it is respectfully requested that the Competent Authority apply all appropriate means  
13 available to compel compliance with the attached request for testimony.

14           This Court requests that the following witnesses who are expected to work within your  
15 jurisdiction at the below address be compelled to answer the questions listed in Appendix 1:

16           Javier Cano, Paseo De La Victoria, 31 – 1A, Cordoba, Spain, 14004

17           David Garcia Sinova, Paseo De La Victoria, 31 – 1A, Cordoba, Spain, 14004

18           The evidence sought in Appendix 1 is expected to be used at trial.

19                   **IV.    REQUIREMENT THAT THE EVIDENCE BE GIVEN ON OATH OR**  
20                   **AFFIRMATION**

21           This Court requests that in executing the Letter of Request the written answers of Mr.  
22 Cano and Mr. Sinova be given under oath under penalty of perjury.

23                   **V.     SUBJECT MATTER OF QUESTIONS**

24           The examination of Mr. Cano and Mr. Sinova will be limited to the specific questions  
25 attached to this Request as Appendix 1.

26                   **VI.    SPECIAL METHODS OR PROCEDURES TO BE FOLLOWED**

27           This Court does not request any special methods or procedures to be followed pursuant to  
28 Chapter I, Article 9 of the Hague Convention.

**VII. REQUEST FOR NOTIFICATION OF TIME AND PLACE FOR THE EXECUTION OF THE LETTER OF REQUEST**

Under Article 7 of the Hague Evidence Convention, this Court requests that the parties' United States legal representatives be furnished as soon as practicable with a copy of the executed Letter of Request, at the addresses provided above. It is also requested that these legal representatives be furnished with the answers to these questions as soon as possible.

**VIII. FEES AND COSTS**

It is requested that after executing the Request you submit a note of fees and costs which are reimbursable under the second paragraph of Article 14 or Article 26 of the Hague Convention to:

Matthew Chivvis  
Morrison & Foerster LLP  
425 Market Street, Suite 3200  
San Francisco, California 94105  
USA

**IX. CERTIFIED TRANSLATION**

Pursuant to paragraph 1 of article 33 of the Hague Convention, a certified translation of this Letter of Request shall be provided to the appropriate Spanish Central Authority for execution.

**X. RECIPROCITY**

This Court is ready and willing to render similar assistance to your country when requested and takes this opportunity to extend to you its highest consideration.

Dated: \_\_\_\_\_

Signature and Seal of the Requesting Authority

\_\_\_\_\_  
Honorable Vince Chhabria  
United States District Court Judge  
Northern District of California

1 Dated: \_\_\_\_\_

2 Signature and Seal of the Executing Authority

3 \_\_\_\_\_  
4 Article 2 Competent Authority

**APPENDIX 1**

**QUESTIONS FOR WITNESSES JAVIER CANO AND DAVID GARCIA SINOVA**

1. Who owned the parent plants used for the crosses performed on behalf of California Berry Cultivars (“CBC”) in 2014, 2015, and 2016?
2. How were those parent plants acquired?
3. From what source or sources were those plants acquired?
4. When were those plants acquired?
5. How did you obtain access to the parent plants?
6. What are the likely parents of the 2014 open pollination crosses? What field were the mother plants placed in and what other varieties were growing in those fields?
7. Do you have any knowledge of the location outside the U.S. of any unreleased strawberry plant that was developed at the University of California? If so, where are the plants located, and who owns the fields or greenhouses where the plants are located?
8. Please describe in detail International Semillas’ relationship with Eurosemillas.
9. What is International Semillas’ ownership interest in the plants grown from the seeds International Semillas delivered to CBC in 2014, 2015, and 2016?
10. Please list everyone involved in planning and performing the crosses in 2014, 2015, and 2016, and describe each person’s role in planning and performing the crosses.
11. Please describe in detail the importation into the United States of the seeds delivered to CBC in 2014, 2015, and 2016.